

**REMARKS**

In the Office Action mailed September 25, 2007, the Examiner indicated that the Applicant's arguments made in the Response dated June 15, 2007 were considered and deemed persuasive such that the previous rejections were withdrawn. However, the Examiner has identified a new combination of references in rejecting the claims in the pending application. As the Examiner correctly indicated, claims 1-39 and 41-51 are currently pending in the application.

In the Office Action, the Examiner objected to claims 11-15 under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that the Applicant regards as the invention. However, the Examiner indicated that claims 11-15 would be allowable if rewritten to overcome the rejections under §112.

By the present response, independent claim 11 has been rewritten to address the indefinite language identified by the Examiner. Based upon the revisions to independent claim 11, independent claim 11 is believed to be in condition for allowance. Claims 12-15 depend directly or indirectly from claim 11 and are thus also believed to be allowable based upon the amendments to claim 11.

In the Office Action, the Examiner indicated that claims 20-38 and 47-49 were allowed. The Applicant hereby acknowledges and appreciates such finding by the Examiner.

**Claims 1-10, 17-19**

In the Office Action, the Examiner rejected independent claim 1 based upon a combination of the Richardson U.S. Patent No. 3,884,219 in view of the Noiles U.S. Patent No. 3,999,537. Reconsideration of such claim rejection is respectfully requested in view of the claim amendments, as well as the following arguments for allowance.

By the present response, independent claim 1 has been amended to generally incorporate the original subject matter of dependent claim 16. Specifically, claim 1 has been amended to indicate that the device includes a temperature sensing element coupled

to a probe. The device further includes a disposable cover that can be positioned over the probe and is movable relative to the probe. The disposable cover includes a respiration sensing element positioned on the disposable cover that is separate from the temperature sensing element. Since the respiration sensing element is positioned on the disposable cover, which is movable relative to the probe, the respiration sensing element is movable relative to the temperature sensing element and is removable from the probe along with the disposable cover. As set forth in paragraph [0031] of the present application, the separate respiration sensing element and temperature sensing element allows the respiration sensing element and the temperature sensing element to be independently positioned to measure the temperature and respiration rate of a patient. Specifically, the disposable cover can be moved along the probe such that the respiration sensing element is properly positioned relative to the patient's nose while the temperature sensing element is properly positioned relative to the patient's mouth.

The Richardson '219 reference cited by the Examiner is directed to a system that includes a temperature sensing transducer 45 and respiration sensing transducer 48 that are both attached to the probe such that their positions relative to each other are fixed. Further, as the Examiner correctly indicated, neither the temperature sensing element or the respiration sensing element are positioned on the removable probe cover 52.

To address this limitation of the Richardson '219 reference, the Examiner cited the Noiles '537 patent. The Noiles '537 reference is directed to a temperature, pulse and respiration detector that includes a probe 12 that can be removed and replaced relative to a connector housing 26. The probe 12 includes a hot junction 16 that acts as a temperature sensing element and a hot junction 18 that acts as a respiration sensor. As can be clearly seen in Figs. 1 and 2, the temperature sensing element 16 and the respiration sensing element 18 are fixed in position relative to each other. Thus, although the Noiles '537 reference teaches (Col. 2, L12-15) that the probe including the temperature and respiration sensing means is disposable, the Noiles '537 reference does not provide any disclosure of a temperature sensing element and a respiration sensing

element that are movable relative to each other. As described previously, mounting the respiration element to the movable cover allows the respiration sensing element to be selectively positioned relative to the temperature sensing element. This feature is not taught or suggested, nor rendered obvious, by the pair of references cited by the Examiner, either alone or in combination. For at least this reason, independent claim 1 is believed to be allowable over the combination of references cited by the Examiner.

Claims 2-10, and 17-19 depend directly or indirectly from claim 1 and are thus believed to be allowable based upon the above arguments for allowance, as well as in view of the subject matter of each claims.

**Claims 39, 41-46 and 51**

In the Office Action, the Examiner also rejected independent claim 39 based upon the combination of the Richardson '219 and Noiles '537 patents. By the present response, independent claim 39 has been amended to generally incorporate the subject matter of original claim 50. As amended, claim 39 requires the step of moving the probe cover and the attached respiration sensing element independently of the probe and temperature sensing element to position the respiration sensing element in a desired location relative to at least one of the patient's nose and mouth. Since independent claim 39 requires the disposable probe cover to include the respiration sensing element, movement of the probe cover and the attached respiration sensing element allows the positioning between the respiration sensing element and the temperature sensing element to be varied depending upon the particular patient.

As set forth above in the arguments of claim 1, neither the Richardson '219 or the Noiles '537 references teach such adjustable positioning between the temperature sensing element and the respiration sensing element. Instead, both the Noiles and the Richardson references indicate that the temperature sensing element and the respiration sensing element are fixed in position relative to each other.

Based upon at least these distinctions, independent claim 39 is believed to be allowable over the combination of references cited by the Examiner.

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Claims 41-46 and 51 depend directly or indirectly from amended independent claim 39 and are believed to be allowable based upon the above arguments for allowance, as well as in view of the subject matter of each claim.

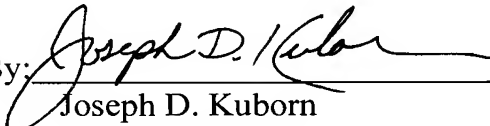
**Conclusion**

Based upon the above arguments for allowance and the foregoing claim amendments, claims 1-15, 17-39, 41-49 and 51 remain in the present application and are believed to be allowable.

The Examiner is invited to contact the Applicant's undersigned attorney with any questions or comments, or to otherwise facilitate prosecution of the present application.

Respectfully submitted,

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